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*Attorneys for Defendant Avelo, Inc.*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

PROTON ASSOCIATES LLC, and  
SETH MILLER,

Plaintiffs,

v.

AVELO, INC.,

Defendant.

Case No. 2:25-cv-00856-JCM-BNW

**DECLARATION OF ANDREW M. SMITH  
IN SUPPORT OF DEFENDANT AVELO,  
INC.'S MOTION FOR  
RECONSIDERATION OF MINUTE  
ORDER DENYING ITS SPECIAL  
MOTION TO DISMISS COUNT IV OF  
THE COMPLAINT PURSUANT TO  
NEVADA'S ANTI-SLAPP STATUTE**

1 I, Andrew M. Smith, state the following:

2 1. I am over eighteen (18) years of age and am an attorney and a member in good  
3 standing of the State Bar of Oregon. I am the founder of Resonate IP, LLC, attorneys for  
4 Defendant and Counterclaimant Avelo, Inc. (“Avelo”). Resonate IP is a full-service intellectual  
5 property law firm specializing in all aspects of trademarks and brand protection. I have never  
6 been disciplined by any court or any state or federal bar organization. I am currently applying to  
7 appear in this action *pro hac vice*. If called as a witness, I could and would competently testify to  
8 the following facts, all of which are within my personal knowledge unless stated upon  
9 information and belief.

10 2. As set forth in my June 18, 2025 declaration (ECF No. 14-1), on or about May 9,  
11 2025, I sent two cease and desist letters (the “Letters”) on behalf of Avelo to: (1) Seth Miller (“Mr.  
12 Miller”) and Proton Associates LLC (“Proton”); and (2) Russell Primeaux, (“Mr. Primeaux”),  
13 counsel for Lamar Advertising (“Lamar”).

14 3. I have represented Avelo in connection with intellectual property matters since  
15 October 5, 2020, commencing with representation at my former firm Holey & Menker PA and  
16 continuing on with Resonate IP, LLC, as of May 17, 2021. My representation of Avelo has  
17 included the prosecution of applications seeking federal trademark registrations and in connection  
18 with trademark and other intellectual property litigation. I have also regularly advised Avelo  
19 regarding the scope and enforcement of its intellectual property on several matters. As a result of  
20 this experience, I am very familiar with Avelo’s copyright and trademark portfolio.

21 4. The statements contained in the Letters were based on my professional, good faith  
22 legal analysis and on my extensive experience with, and knowledge of, Avelo’s intellectual  
23 property portfolio. The statements in the Letters were true to the best of my knowledge and based  
24 on my own good faith opinions of the law and the scope of Avelo’s intellectual property. I do not  
25 believe that any statements in the Letters were false so, necessarily, no statements in the Letters  
26 were made with knowledge of any falsehood contained in them. Avelo authorized me to send the  
27 Letters on its behalf. As someone who regularly communicates with Avelo and advises it on  
28 intellectual property issues, I know that Avelo was seriously considering, in good faith, the

1 initiation of judicial proceedings against Plaintiffs and Lamar at the time I sent the Letters (as the  
2 Letters make clear, I believe). Avelo would not have authorized the sending of the Letters without  
3 such a good faith belief and contemplation. In fact, I firmly believe it likely that judicial  
4 proceedings would have been instituted by Avelo had Plaintiffs not filed this action first.

5 5. After sending the Letters to Plaintiffs and to Lamar's counsel, on or about May 12,  
6 2025, I began reaching out to attorneys who I believed may be able to act as litigation counsel for  
7 Avelo in connection with its potential lawsuit against Lamar to enforce its intellectual property  
8 rights.

9 \* \* \*

10 I hereby declare under penalty of perjury that the foregoing is true and correct.

11 Executed on: August 8, 2025

12 /s/ Andrew M. Smith

13 ANDREW M. SMITH, ESQ.  
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